

Hearing Date: February 4, 2019 at 10:00 a.m.
Objection Deadline: January 31, 2019 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : **Chapter 11**
:
SEARS HOLDINGS CORPORATION, et al., : **Case No. 18-23538 (RDD)**
:
Debtors.¹ : **(Jointly Administered)**
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF YODER-17TH STREET
PROPERTIES, LLC TO DEBTORS' SUPPLEMENTAL NOTICE OF CURE COSTS AND
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Yoder-17th Street Properties, LLC (“Yoder”), by and through its undersigned counsel, hereby files this limited objection and reservation of rights (this “Objection”) to the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (ECF No. 1774) (the “Supplemental Assumption Notice”) filed by the above-captioned Debtors (collectively, the “Debtors”). In support thereof, Yoder respectfully states as follows:

STATEMENT OF OBJECTION

1. On November 19, 2018, the Court entered the *Order Approving Global Bidding Procedures and Granting Related Relief* (ECF No. 816), which contemplates a process for the assumption of executory contracts and unexpired leases.
2. On January 18, 2019, the Debtors filed a *Notice of Successful Bidder and Sale Hearing* (ECF 1730), stating that an affiliate of ESL Investments, LLC (the “Purchaser”) was the successful bidder for the Global Assets (as defined therein).
3. On January 23, 2019, the Debtors filed the Supplemental Assumption Notice, which lists a number of purported executory contracts and leases that the Debtors claim are subject to possible assumption and assignment to the Purchaser in connection with the Sale.
4. The Supplemental Assumption Notice lists a “Master Lease” between Kmart of Washington, LLC, one of the Debtors, and Yoder with a contract expiration date of December 31, 2018 and sets forth an asserted cure amount of \$31,773.²
5. The Debtors have not properly identified the actual agreement between the parties. Kmart of Washington, LLC and Yoder are parties to a certain Lease Termination Agreement dated

² See Line 667 on page 31 of 32 of Exhibit A-1 Cure Costs Schedule – Additional Executory Contracts of the Supplemental Assumption Notice.

October 1, 2018 (the “Agreement”) which provides for the termination as of December 31 2018 of that certain nonresidential real property lease dated December 9, 1976 between Kmart and Yoder (by and through their respective predecessors in interest).

6. Prior to assuming and assigning the Agreement, the Debtors would have to cure any past defaults that existed prior to the assumption. *See* 11 U.S.C. § 365(b)(1)(A); *see Also* *Eastern Airlines Inc. v Ins. Co. of the State of Pa. (In re Ionosphere Clubs, Inc.)*, 85 F.3d 992, 999 (2d Cir, 1996) (citations omitted) (stating that the contracting parties must receive the full benefit of their bargain if they are forced to continue performance).

7. In the Supplemental Assumption Notice, the Debtors have designated the potential cure amount for the Agreement at \$31,773.00. This is incorrect and the actual cure amount is \$66,001.00 (comprised of third quarter CAM: \$27,001; December 2018 base rent: \$24,000; and fourth quarter CAM: \$15,000).³ To the extent that the Debtors are referring to an executory contract and/or unexpired lease other than the Agreement, Yoder objects to the cure amount set forth in the Supplemental Assumption Notice and reserves its rights to amend this Objection once the Debtors have clarified the executory contract and/or unexpired lease to which they refer.

³ On January 28, 2019, Debtors filed Notice Of Presentment Of Stipulation, Agreement And Order Assuming Lease Termination Agreement (24800 W. Valley Highway, Kent, Washington) (ECF No. 2112), which sets forth the parties’ agreement as to the proper cure amount with respect to the Lease Termination Agreement. To the extent that the Court approves the matters set forth in the Stipulation, Agreement and Order and the Lease Termination Agreement, the cure amount with respect to the Agreement will be resolved.

8. In addition, to the extent that the executory contract and/or unexpired lease which the Debtors have listed with respect to Yoder in the Supplemental Assumption Notice is not the Agreement, the limited adequate assurance information provided by the Debtors is insufficient such that assignment and assumption of such other agreement is inappropriate. All rights and arguments of Yoder in connection with the Purchaser's provision of adequate assurance are reserved and preserved. *See* 11 U.S.C. § 365(b)(1).

9. Accordingly, Yoder objects to the Supplemental Assumption Notice and to the entry of any order approving the assumption or assignment of the Agreement between Debtors and Yoder without payment of the proper cure amount due and owing under the Agreement.

10. This Objection is also without prejudice to the fact that there may be additional cure amounts that may accrue on an ongoing basis between the filing of this Objection and any subsequent assumption and assignment of the Agreement. As such, Yoder reserves any and all of its rights to amend, supplement, or modify this Objection up to and including the actual assumption and assignment of the Agreement.

WHEREFORE, Yoder respectfully requests that this Court deny the assumption of the Yoder Agreement without the payment of the proper cure amount plus such other and further relief as the Court deems just and proper.

Dated: January 31, 2019

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/s/ Stephen M. Miller

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